

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA MONTELONGO	§	
<i>Plaintiff,</i>	§	
	§	
V.	§	
	§	5:19-cv-01123-FB
RED BEARD LLC D/B/A RED BEARD	§	
TELECOM D/B/A RED BEARD IT,	§	
NICHOLAS MATTIA, JEREMY MATTIA,	§	
ELLIOT TRUONG, JOHN/JANE DOES 1-5	§	

**DEFENDANT JEREMY MATTIA'S MOTION TO DISMISS
UNDER 12(b)(2)**

TO THE HONORABLE FRED BIERY:

NOW COMES Defendant Jeremy Matta, in the above styled and numbered cause and files this, their *Motion to Dismiss Under 12(b)2*. Defendant will respectfully show the following:

INTRODUCTION

Plaintiff Maria Montelongo filed this action against Defendant Jeremy Matta alleging that the Defendant Jeremy Matta is the Senior Design Engineer of Red Beard IT and contacted Plaintiff via phone solicitation through third party telemarketers, to inquire as to the Plaintiff's desire to reconsolidate, refinance or otherwise manage her student loan debt.

Plaintiff improperly seeks to have this United States District Court in Texas exercise personal jurisdiction over Defendant Jeremy Matta, despite the fact that Jeremy Matta maintains no offices, facilities or other presence in Texas, has no assets in Texas, does not otherwise

conduct any business in Texas, and thus does not have sufficient contacts with Texas that would render the Defendant subject to suit here. Plaintiff, who bears the burden of establishing this Court’s jurisdiction over Jeremy Matta, fails to allege the “minimum contacts” necessary for a court to assert personal jurisdiction.

1. The Court Lacks Specific Jurisdiction over Red Beard LLC

Plaintiff asserts in their *Amended Complaint* the Court has specific personal jurisdiction over the Defendants because the calls at issue were made by or on behalf of the defendants into this district, and the Defendants committed a tort in Texas by violating the TCPA.

Defendant, Jeremy Matta has never been an employee of Red Beard LLC or Red Beard IT. Defendant was listed on the website as someone who could potentially consult for design engineering.

“Specific” jurisdiction arises “out of a party’s activities in the forum state that are related to the cause of action alleged in the complaint.” *Sloss Indus. Corp.*, 488 F. 3d at 925. These acts alleged in the complaint must involve some act by which the defendant purposefully avails itself of the privilege of conducting activities within the State. The conduct must give rise to the plaintiff’s cause of action and the defendant’s contacts with the state must be such that the defendant should reasonably anticipate being haled to court there.

As noted, Jeremy Matta does no business in Texas and is not party to any contracts with the Plaintiff. Plaintiff alleges calls were made on behalf of defendants and fails to provide a nexus between the contact and the defendants. Simply alleging the calls

were made at the direction of defendant is insufficient to satisfy the burden of showing minimum contacts were made.

CONCLUSION

Plaintiff's *Amended Complaint* is deficient. Principally, however, Plaintiff has sued the wrong defendant in the wrong court. Jeremy Matta has no meaningful or relevant contacts with Texas and there is no link between Jeremy Matta and Plaintiff's alleged injuries. For these reasons, and given the futility of the Plaintiff's cause of actions against Defendant, Plaintiff's entire *Amended Complaint* should be dismissed for lack of personal jurisdiction.

Respectfully submitted,

/s/ Mary Pietrarezek
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CERTIFICATE OF SERVICE

I hereby certify that on the 29th Day of April 2020, I served the foregoing Rule 12(b)(2) Motion to dismiss on counsel of record as noted below:

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